

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HARRY R. JACKSON, JR.

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Washington, D.C. 20003

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3102 Apple Road, N.E.
Washington, D.C. 20018

WALTER E. FAUNTROY

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Washington, D.C. 20011

JAMES SILVER

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ANTHONY EVANS

4021 7th Street, N.E., Apt. #4
Washington, D.C. 20017

DALE E. WAFER

4021 19th Street, N.E.
Washington, D.C. 20018

MELVIN DUPREE

1904 Naylor Road, S.E.
Washington, D.C. 20020

and HOWARD BUTLER

1301 Whittier Place, N.W.
Washington, D.C. 20012

Plaintiffs,

v.

Civil Action No. _____

COMPLAINT

DISTRICT OF COLUMBIA, a federal
municipality

One Judiciary Square
441 4th Street, NW, Suite 1145S
Washington, DC 20001

ADRIAN FENTY, Mayor of the District of
Columbia

Executive Office of the Mayor
1350 Pennsylvania Ave., NW, Ste 316
Washington, DC 20004

HON. LEE F. SATTERFIELD, Chief Judge
of the District of Columbia Superior Court,

Moultrie Courthouse
500 Indiana Avenue, N.W., Rm. 3500
Washington, D.C. 20001

Defendants

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
DECLARATORY AND INJUNCTIVE RELIEF AND ATTORNEYS FEES**

INTRODUCTION

Plaintiffs seek declaratory and injunctive relief on the ground that the Defendants are violating Plaintiffs' rights of due process under the 5th Amendment of the United States Constitution. Plaintiffs are guaranteed an opportunity to be heard in the exercise of their fundamental right, and that right is being denied.

I. COMPLAINT

1. On January 5, 2010, the District of Columbia transmitted to Congress the "Religious Freedom and Marriage Equality Act of 2009" (hereinafter "the Act"), and thus triggered the Congressional Review Period related to said enactment of the District of Columbia. The DC Home Rule Act, Pub. L. 93-198, requires DC to transmit its duly enacted laws to

Congress for review, and calculates the Congressional Review Period in such a manner as to prohibit any DC law from taking effect until the end of a 30-day period “excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session.” Section 602(C)(2).

2. The Congressional Review Period is expected to expire at 12:00 a.m. on Wednesday, March 3, 2010, making effective as a matter of law the Act. Upon the Act becoming effective, the Defendants will be authorized to enforce and apply the Act within the District of Columbia.

3. Your Plaintiffs have duly executed their right of referendum regarding the Act. This right is guaranteed by the D.C. Charter. Your Plaintiffs filed their referendum on the 1st day available for them to do so and have, since that time, pursued its progression through the extensive administrative system arranged by the District of Columbia with no delay and great haste.

4. Unfortunately, by operation of the D.C. Code, once the Act becomes law, any efforts at referring it for a vote are immediately mooted as a matter of law. D.C. Code § 1-204.102(b)(2); D.C. Code § 1-1001.16(j)(2). The Act in question purports to become law in a matter of hours (12:00 a.m. EST on Wednesday, March 3, 2010), and your Plaintiffs have not yet been able to complete the review process that they are guaranteed under the D.C. Code. The inability of your Plaintiffs to complete the review process is not of their own making, but because of the inadequacy of the procedures provided by the D.C. Code.

5. Moreover, your Plaintiffs, in exercising their right of referendum, are exercising a fundamental right—the right to vote. Accordingly, the procedures required by due process must be significant enough to properly safeguard the exercise of the fundamental right at issue.

II. FACTUAL AND PROCEDURAL BACKGROUND

6. On December 15, 2009, the Council passed the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 (“the Act”) which, in pertinent part, authorizes the issuance of marriage licenses within the District of Columbia to same-sex couples.¹ The Council transmitted the Bill to Mayor Adrian M. Fenty on December 17, 2009, and Mayor Fenty signed the Bill on December 18, 2009. D.C. Code § 1-204.04(e).

7. As required by Congress under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code § 1-201.01 *et seq.* (popularly known as the “Home Rule Act”), the Act was transmitted to the United States Congress on January 5, 2010 for a thirty (30) legislative day review period. D.C. Code § 1-206.02(c)(1). The Act is projected by the District of Columbia to go into effect at the close of the congressional review period, on or about 12:00 a.m. EST on March 3, 2010, and, at such time, the Act will no longer be subject to a referendum by the citizens of the District. D.C. Code § 1-204.102(b)(2); D.C. Code § 1-1001.16(j)(2).

8. On January 6, 2010, the earliest date possible after transmission to Congress, Petitioners filed their referendum on the Act with the District of Columbia Board of Elections and Ethics. D.C. Code § 1-1001.16(a)(1); D.C. Mun. Regs., tit. 3, § 1000. Twenty-one days later, the Board held a public hearing on January 27, 2010 to determine whether the referendum presented a “proper subject” for the referendum process. D.C. Code § 1-1001.16(b)(1). In a Memorandum Opinion and Order issued on February 4, 2010, the Board rejected the Petitioners’ referendum. The Board marked the referendum as “received but not accepted,” and continues to

¹ See Religious Freedom and Civil Marriage Equality Amendment Act of 2009, Act No. 18-0248, § 2(b) (Dec. 15, 2009), available at <http://www.dccouncil.washington.dc.us/images/00001/20091218103236.pdf>.

hold the referendum pending the outcome of the current judicial review process. D.C. Code § 1-1001.16(b)(2).

9. The very next day, on February 5, 2010, Petitioners sought judicial review from the Superior Court as well as a preliminary injunction seeking to stay the effective date of the Act to preserve Petitioners' ability to exercise their right of referendum while the review process unfolded. That same day, Petitioners also requested an immediate hearing on the motion for preliminary injunction. Petitioners made additional requests for a hearing on February 8, 11, 12, and 15, 2010. On February 16, 2010, the Superior Court granted intervention to the Attorney General of the District of Columbia. Petitioners were eventually given a hearing on February 19, 2010, *two weeks* following the filing of the Petitioners' lawsuit and motion for preliminary injunction. At the hearing on February 19, 2010, the Superior Court tentatively denied Petitioners' motion for preliminary injunction and their *ore tenus* motion for an injunction pending appeal. The Superior Court entered a final, formal order denying Petitioners' motions for preliminary injunction and injunction pending appeal on February 22, 2010. On February 26, 2010, the Superior Court issued its memorandum opinion explaining the reasons for its February 22, 2010 order.

10. The same day the Superior Court entered its written order denying the Petitioners' motion for preliminary injunction, February 22, 2010, Petitioners filed an emergency appeal with the District of Columbia Court of Appeals and requested an injunction pending appeal. On February 26, 2010, the Court of Appeals denied Petitioners' request for an injunction pending appeal and summarily affirmed the Superior Court's decision denying Petitioners' motion for preliminary injunction. The Court of Appeals' judgment states, without further explanation, that "appellants failed to meet the test for the issuance of a preliminary injunction." On March 1,

2010, the Plaintiffs filed an Application for Stay with the United States Supreme Court. As of the moment that this Complaint was filed, no ruling had yet been received from the Supreme Court.

II. JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the Home Rule Act; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of law, of rights, privileges and immunities secured by the laws of the United States; under 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 42 U.S.C. § 1988(b) to award attorneys fees; under 28 U.S.C. § 2201(a) to secure declaratory relief; and under 28 U.S.C. § 2202 to secure preliminary and permanent injunctive relief.

12. Venue lies in this district pursuant to 28 U.S.C. § 1391, because the events giving rise to the claim occurred within the District and because Defendants are located in the District.

III. PARTIES

13. Petitioner Harry R. Jackson, Jr. is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

14. Petitioner Robert King is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on

the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

15. Petitioner Walter E. Fauntroy is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

16. Petitioner James Silver is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

17. Petitioner Anthony Evans is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

18. Petitioner Dale E. Wafer is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3)

to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

19. Petitioner Melvin Dupree is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

20. Petitioner Howard Butler is a qualified registered voter in the District and an official proponent of the Referendum. He has standing pursuant to D.C. Code § 1-1001.16(b)(3) to seek review of the Board's decision, a declaration that the HRA restriction imposed by the Council on the people's right of referendum is an impermissible requirement not authorized by the Charter Amendments Act, a declaration that the Referendum does not violate the HRA, and a writ in the nature of mandamus compelling the Board to accept the Referendum.

21. The Defendants in this case are the Mayor of the District of Columbia, Adrian Fenty, in his official capacity as Mayor, the District of Columbia is a federal municipality, created and established by Congress pursuant to its authority in the United States Constitution, and Hon. Lee F. Satterfield, Chief Judge of the Superior Court of the District of Columbia, in his official capacity. The Superior Court of the District of Columbia is responsible for the issuance of marriage licenses within the District of Columbia.

IV. CAUSE OF ACTION
CLAIM FOR RELIEF UNDER 42 U.S.C. § 1983—VIOLATION OF
PLAINTIFFS' DUE PROCESS RIGHTS UNDER THE 5TH AMENDMENT

22. Plaintiffs repeat and reallege all preceding paragraphs.

23. Defendants' planned effectuation of the Act at or subsequent to 12:00 a.m. EST on March 3, 2010 violates the federal due process guaranteed to the citizens of the District of Columbia under the 5th Amendment to the United States Constitution.

24. Since Plaintiffs' efforts to refer the Act in question for a vote by all registered voters of the District of Columbia were initially denied by the D.C. Board of Elections and Ethics on February 4, 2010, Plaintiffs have not yet received the process and review to which they are entitled.

25. To date, the Plaintiffs have only received a ruling from the Superior Court of the District of Columbia regarding their request for a preliminary injunction. The Plaintiffs have not yet had a meaningful opportunity to brief the merits of their claim before the Superior Court, or an opportunity to be heard in that regard. Plaintiffs are entitled, given the fundamental nature of the right they are attempting to exercise, to full and complete judicial review, including a final determination on the merits of their claim by the Superior Court, as well as an appeal of that determination by the D.C. Court of Appeals.

26. If this Court does not grant injunctive relief, the fundamental referendum right of the Plaintiffs will be forever lost, thereby creating irreparable harm. Neither money damages nor any other provision of law can bring back the Plaintiffs' lost right of referendum, or adequately substitute therefor.

27. Therefore, DC Defendants' actions are contrary to law, are causing irreparable injury to Plaintiffs, and entitle Plaintiffs to emergency declaratory and injunctive relief.

V. PRAYER FOR RELIEF

28. WHEREFORE, PREMISES HEREIN CONSIDERED, Plaintiffs respectfully request and pray for the following:

(a) That any and all requirements for bond or the posting of security be waived since there is no risk that the Defendants will suffer monetary loss by the issuance of injunctive relief.

(b) The issuance of a temporary restraining order staying the effective date of the Religious Freedom and Marriage Equality Act of 2009; and

(c) The issuance of a temporary restraining order enjoining the Defendants and their officers, employees, and agents from implementing, applying, or taking any action whatsoever regarding or pursuant to the Act until this Court orders otherwise or the temporary restraining order expires by operation of law; and

(d) The issuance of a preliminary injunction staying the effective date of the Religious Freedom and Marriage Equality Act of 2009 until such time as your Plaintiffs are provided with a full and fair opportunity to the rights of review provided by law regarding the exercise of their fundamental right of referendum; and

(e) The issuance of a preliminary injunction enjoining the Defendants and their officers, employees, and agents from implementing, applying, or taking any action whatsoever regarding or pursuant to the Act until this Court orders otherwise, or until the Act is stayed by operation of law;

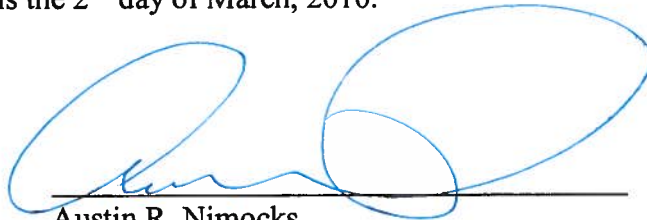
(f) The issuance of a judgment declaring that Defendants have violated Plaintiffs' state and federal rights, as set out herein and, additionally or alternatively, that the processes and procedures defined for the Plaintiffs' exercise of their referendum rights are inadequate and violate the principles of due process under the 5th Amendment,

and that the various statutes, regulations, and rules, administrative or otherwise, upon which the Defendants rely to improperly disenfranchise the Plaintiffs are unconstitutional on their faces and/or as applied, as set out herein;

(g) Awarding Plaintiffs their reasonable costs, including attorney's fees, incurred in bringing this action pursuant to 42 U.S.C. § 1988; and

(h) Granting such other and further relief, equitable or otherwise, as this Court deems just and proper.

Respectfully submitted this the 2nd day of March, 2010.



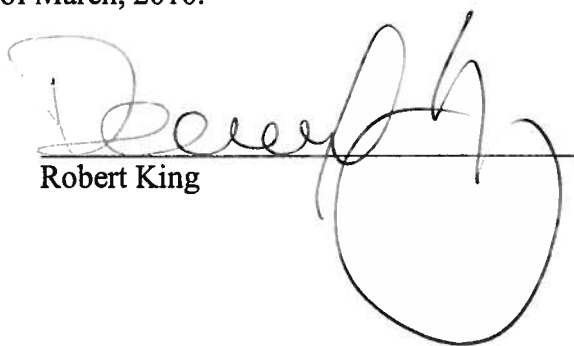
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VERIFICATION

I, Robert King, state and verify, subject to the penalties of perjury under the laws of the United States of America, that the above statement of facts and foregoing contents of the complaint are true and accurate to the best of my knowledge, so help me God, pursuant to 28 U.S.C. § 1746.

SO SWORN and verified this the 2nd day of March, 2010.


Robert King